



On Your Side®

May 3, 2010

Filed Electronically

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N – 5655  
U. S. Department of Labor  
200 Constitution Ave., N.W.  
Washington, D. C. 20210

**Attention: Lifetime Income RFI (RIN 1210-AB33)**

Dear Office of Regulations and Interpretations:

On February 1, 2010, the U. S Department of Labor (Department) – Employee Benefits Security Administration (EBSA) and the Department of the Treasury (Treasury) released a Request for Information to obtain information from the public on the subject of lifetime income options in retirement plans, especially defined contribution plans. As a result of information received from this request, the Treasury may propose amendments to current Internal Revenue Code (Code) qualification provisions for defined contribution plans and the Department may propose changes to regulations promulgated pursuant to the Employee Retirement Income Security Act (ERISA) governing certain aspects of these plans. Nationwide Financial Services, Inc. (Nationwide) thanks the Department for providing the opportunity to comment on this important issue affecting participants in defined contribution plans, as well as plan sponsors and service providers to these plans.

Nationwide is an industry leader in the private and public sector retirement plans industry. As of March 31, 2010, Nationwide provides retirement plan services to approximately 32,300 retirement plans (including profit-sharing plans with salary deferrals qualified under section 401(k) of the Code (401(k) plans)) with 2,465,600 participants in the United States. Nationwide is also a leading provider of retirement plan services to retirement plans sponsored by small businesses.

Nationwide shares the goal with Congress, the Department, and the retirement plans industry of addressing the issue of effectively providing guaranteed lifetime retirement income options for all Americans. To achieve this goal, Nationwide agrees with the comments of the American Council of Life Insurers (ACLI) and additionally submits its *401KIncome* proposal (Nationwide Proposal) for your consideration. The intent of this proposal is to promote features available in current defined contribution plans that would provide lifetime income guarantees similar to guarantees once provided by defined benefit plans. Although the Nationwide Proposal is primarily a legislative proposal, it includes concepts that the Department can integrate into any possible regulatory reform

affecting the issue of guaranteed lifetime income benefits in defined contribution plans. A copy of the Nationwide Proposal is attached to this submission.

In general, the Nationwide Proposal enhances certain features of the current defined contribution retirement system, especially 401(k) plans, with the purpose of encouraging sponsors of 401(k) plans to fund guaranteed lifetime income benefits for participants in their plans. The Nationwide Proposal strengthens 401(k) plans by 1) providing a greater incentive for the employer match; 2) increasing participant investment diversification; 3) increasing use of lifetime guarantee options; 4) reducing retirement plan withdrawals before retirement; and 5) expanding retirement plan access by offering greater tax incentives for the employer match.

In conclusion, Nationwide believes that the current retirement plan system provides adequate individual and national retirement security, but improvements are necessary to strengthen the defined contribution plan system. Therefore, Nationwide endorses the ACLI response and submits the Nationwide Proposal for your review and consideration. If you need additional information, please contact me at 614-854-8650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne L. Arvia".

Anne L. Arvia  
Senior Vice President  
Nationwide Financial – Retirement Plans



401KIncome

# BACKGROUND

Nationwide, a leading provider of employer-sponsored retirement savings plans, an industry leader in retirement income and the 2009 Plan Sponsor of the Year, is concerned about the retirement security of all Americans. As was quantified by the National Retirement Risk Index from the Center for Retirement Research at Boston College, 64 percent of Americans are at risk of being financially unprepared for retirement even when conservative assumptions are made to create a best case scenario.

In theory, the defined contribution system can provide adequate individual and national retirement security, but two major policy issues need to be addressed:

1. Access — increasing overall access to employer-sponsored retirement plans; and
2. Guaranteed Income — promoting features within the defined contribution system that afford income guarantees similar to what was once provided by defined benefit plans.

This paper addresses the issue of retirement income guarantees. For Nationwide's public policy proposal on retirement plan access, please see the Nationwide SIMPLE 401(k) 2.0 proposal.

## **Guaranteed Income Matters.**

Employer-sponsored retirement plans are the primary source of retirement savings for most workers in America. There are generally two categories of employer-sponsored retirement plans.

**Defined Benefit** — an employer-sponsored retirement plan, also referred to as a traditional pension plan, where an employee is guaranteed a certain payout or income, typically based on salary history and years of service. Contributions may be made by the employee, employer, or both. *With defined benefit plans, the employer bears the investment risk and generates income at retirement.*

**Defined Contribution** — an employer-sponsored retirement plan where the employee elects to defer an amount of salary into the plan and typically directs how these contributions are invested. Employers may also contribute to the plan. *With defined contribution plans, the responsibility to manage investment risk and to generate income at retirement is shifted to the employee.*

While the share of the workforce covered by an employer-sponsored retirement plan has not changed over the last quarter century, the type of coverage has gradually shifted from defined benefit to defined contribution plans— mainly 401(k) plans. Most of the working age population has virtually nothing accumulated in retirement savings outside of these employer-sponsored plans.<sup>2</sup>

### Footnotes

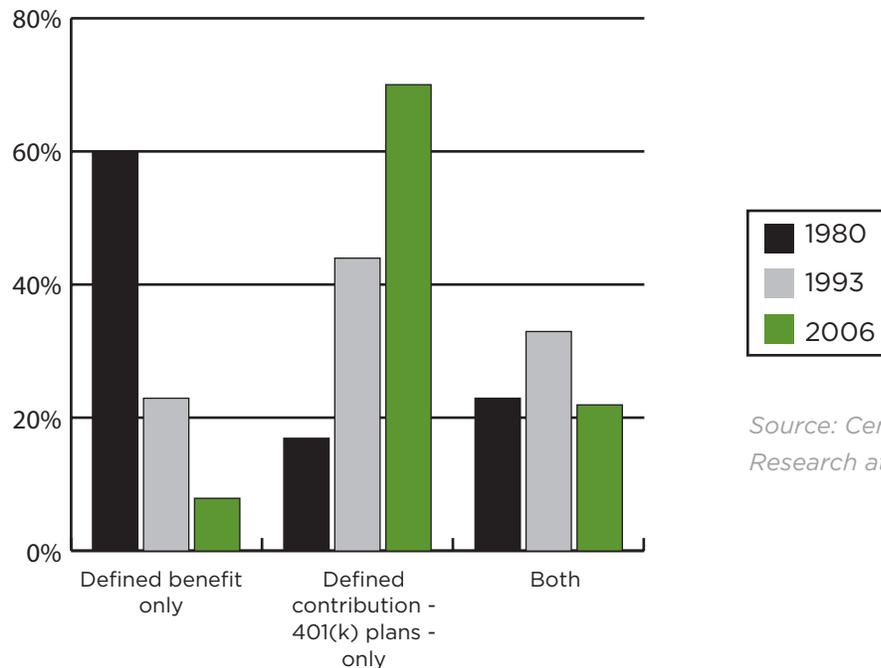
<sup>1</sup> PlanSponsor Magazine, 04-03-2009, Corporate Sector

<sup>2</sup> "Do Households Have a Good Sense of Their Retirement Preparedness"  
Boston College Center for Retirement Research, August 2008



# US WORKERS BY RETIREMENT PLAN TYPE

PRIVATE SECTOR WORKERS WITH PENSION COVERAGE, BY PENSION TYPE, 1980-2006



Source: Center for Retirement Research at Boston College

Traditional defined benefit pension plans were the backbone of retirement security for previous generations of workers. People typically worked for the same company most of their careers. Many worked for companies that were American institutions — airlines, steel, telecom, retailers and others. Lifetime income from pensions was virtually guaranteed.

But that guarantee has run headlong into an era of job and career “hopping”, a shift of the employment base to smaller companies and regulatory structural changes. The clear and demonstrable trend is for

employers to avoid the promises and liabilities associated with traditional defined benefit plans, thus eliminating guaranteed income as a component of most workers’ employer-sponsored retirement plan.

Creating ways to encourage the incorporation of guaranteed income is a logical next step in the progression of 401(k)-type plans as they continue to displace traditional company pension plans. At the moment, there is an increasing tendency for workers to take their payout as a single lump-sum distribution at retirement, rather than an annual payout that is guaranteed to last a lifetime.<sup>3</sup>

## Footnotes

<sup>3</sup> Employee Benefits Research Institute, Continuing Decline of Pension Plans Likely to Hit Younger workers and Families the Hardest, Study Shows, press release, May 4, 2004

# INCOME RISK

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Investors have long been educated on investment risks while saving for retirement, but as a society we have not shifted gears to address income risk.

With defined contribution plans trending from supplementing to supplanting defined benefit plans, far too many Americans are subject to income risk at retirement. Income risk becomes a factor when people retire and begin withdrawing a fixed percentage of income from their portfolios every year. In years of poor market performance, their portfolio decreases and so does their income. In short, when investment values fluctuate with market conditions, so do income streams.

# LONGEVITY RISK

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This shift is playing out against dramatic changes in life expectancy. The good news is that Americans are living longer. But that presents a new challenge – particularly for those who may outlive their savings. At age 65, Americans have a life expectancy of 83 years.<sup>4</sup> A married couple at age 65 has a 33 percent chance of one spouse reaching 95.<sup>5</sup> And those are just the averages.

#### Footnotes

<sup>4</sup> Centers for Disease Control and Prevention, National Center for Health Statistics, Table 27, Life expectancy at birth, at age 65 and at 75 years of age, according to race and sex, 2003

<sup>5</sup> Society of Actuaries Annuity 2000 Mortality Table



# 401KIncome

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Recent developments from the current economy include employers dropping the 401(k) match, reduced individual account balances, the demise of the traditional company pension plan and concerns about retirement plan access. These beg for inventive policy solutions that reward employers for improving the retirement security picture of their employees. Nationwide proposes **401KIncome**, a public policy solution that provides incentives for the financing of guaranteed retirement income while strengthening the current employer-sponsored defined contribution system.

401KIncome can help encourage plan sponsors of defined-contribution plans to earmark the employer match for the purpose of funding retirement income streams for their employees. Here is how it would work:

- Plan sponsors would receive a tax credit instead of a tax deduction for any employer match that is used to purchase a guaranteed income stream in the form of a fixed or longevity annuity, which combines private and government assurances that the guaranteed income will be backed by several layers of protection.
- The plan would be deemed nondiscriminatory if the employer contributes 2-3% for each employee.
- Employees would still have the same control over and access to their own contributions.
- The employer match would not be available for loans or early withdrawals.
- The fixed annuity would continue to be administered by the annuity provider upon the employee's separation of service and/or the employer's termination of the plan.
- The employee would elect when and what form of lifetime income stream is generated in retirement. If no election is made the default will be annuitized based on a formula that includes age and account balance.

## **Dollar Cost Averaging Income Purchases**

The 401(k) match used to purchase income is an ideal solution to hedge retirement income risk. Dollar cost averaging as a method for investing has long been advocated. By simply investing certain dollar amounts in regular increments over time in a particular investment or portfolio, individuals buy more shares when prices are low and fewer shares when prices are high. This is a strategy for accumulating a retirement nest egg, but it does not address the income risks that can occur at retirement, including inflation, market performance, interest rates and longevity risk.

Income risk is best addressed by purchasing an income stream over the course of one's working career, which allows for varied purchase rates and better overall pricing than if purchased at the point of retirement.

# IMPLEMENTING THE 401KIncome

To achieve the public policy goal of increasing retirement security through guaranteed income, policy makers should support and encourage:

**1. An employer tax credit as incentive for the purchase of guaranteed income units** — Currently, employer contributions are tax deductible, which means that the tax benefit to the employer is equal to the employer's marginal tax rate. A deduction is more favorable to a high-income taxpayer than to a low-income taxpayer. A credit, on the other hand, gives the same tax benefit to the payer regardless of its tax rate. Small employers are likely to be taxed at lower rates than larger employers.

**2. Fiduciary safe harbor for annuity selection** — The selection by a plan fiduciary of an annuity provider or contract for benefit distributions are subject to the fiduciary responsibilities under ERISA Section 404(a)(1)(B). One option available to a plan fiduciary to ensure it meets these fiduciary responsibilities is to satisfy the safe harbor conditions set forth in 29 CFR Section 2550.404a-4. As directed by the Pension Protection Act of

2006, the DOL established this safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account plans subject to ERISA. A plan fiduciary's decision to purchase an annuity for funding purposes related to the 401KIncome should also be subject to this safe harbor protection.

**3. Separate accounts for fixed assets** — Fixed annuity assets should be held separately from provider assets and not chargeable with liabilities incurred in any other business interests of the provider.

**4. Income should be saved until retirement** — Because rollovers are difficult, participants should be able to keep their purchased income with the annuity provider upon the employee's separation of service or the employer's termination from plan, and not be forced into an early withdrawal, which is subject to tax penalty. Legislation should clarify that a pure payout annuity contract can be separated (distributed) from the investment portion of the account at the employee's termination or the employer's termination of the plan.

## 401KIncome AT A GLANCE

**What it does** - This proposal gives a strong incentive for employers with defined contribution plans to use the employer match to purchase a guaranteed stream of income. This proposal would also promote greater use of 401(k) plans, thereby increasing employee access to retirement plan savings.

**What it looks like** - 401(k) plans would offer a deferred fixed income annuity as the investment option for the employer match portion.

**How it works** - Plan Sponsors (employers) would receive a tax credit instead of a tax deduction for any employer match used to fund a guaranteed stream of income payments to participants.

Employees would still have control over and access to their own contributions, but the employer match would not be accessible for loans or early withdrawals. Employees could also choose to put their own deferrals in the defined benefit option.



# STRENGTHENING THE 401(K) SYSTEM

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In light of this transformation in the pension system, providing an incentive for plan sponsors to adopt a retirement income stream purchase using a 401(k) match addresses several retirement public policy concerns. The employer-sponsored system provides 42.3 percent of retirement income for those aged 65 and older. (Social Security provides an additional 42 percent.)<sup>6</sup> For the long-term financial security of individual Americans and for the country as a whole, public policy should strengthen the defined contribution system. Here are ways the 401(k) Income proposal accomplishes that.

## **1. Provides greater incentive for use of the employer match**

Research shows that when plan sponsors suspend their 401(k) plan match, employees sometimes reduce or stop their own 401(k) contributions. In the current economic climate, companies are cutting the 401(k) match as a cost saving measure. According to Hewitt Associates a younger worker earning \$50,000 a year who contributes 6 percent of his/her salary will have \$16,000 less for retirement than what they would have had if their employer hadn't suspended their match for one year. That number jumps to \$48,000 if the employee stops contributing during that year as well. A younger worker earning \$50,000 a year who stops contributing 6 percent of his/her salary for five years may have up to \$150,000 less for retirement.<sup>7</sup>

## **2. Increases participant investment diversification**

In this system, employees would not only see an account balance on their quarterly statements, but also the defined income benefit they are accumulating in retirement. This income will be guaranteed, which may allow for more flexibility in the investment portion of the account.

### Footnotes

<sup>6</sup> Profit Sharing 401(k) Council of America Issue Brief, March 2006

<sup>7</sup> Hewitt Associates, Companies Can Save Millions of Dollars by *Suspending Their 401(k) Match for Just One Year*, According to *New Hewitt Analysis*, April 13, 2009

<sup>8</sup> Sources: EBRI Issue Brief, August 2007; "Despite Costs, More People Raid 401(k)s for Cash" *The Wall Street Journal*, February 28, 2008; "Raiding the 401(k) Nest Egg" *The Wall Street Journal*, May 5, 2008

## **3. Increases usage of lifetime income guarantees**

Behavioral Finance shows that individuals have a psychological barrier to putting a large part of their savings in an annuity at the point of retirement, yet 93% of respondents in a Harris Active survey in 2007 said that finding a guaranteed source of post-employment income is their topmost priority in planning their retirement.

## **4. Reduces retirement plan leakage**

An important behavioral finance component of getting people to save for retirement is giving them the ability to access those funds for loans or hardship withdrawals. There is a difficult balance between providing this access and preventing retirement plan leakage. In 2007 alone, 49 percent of employees borrowed from retirement savings to pay off existing debt.<sup>8</sup> By creating an income investment using the employer match funding, employees are not losing access to any of their own deferred savings. At the same time, there is insurance that at least a portion of the retirement savings account is leakage-free until retirement.

## **5. Expands retirement plan access**

Greater tax incentives for the employer match will help offset the costs of offering a plan, allowing more employers to maintain their 401(k) plans and potentially encouraging other employers to offer plans.

# 401KIncome

[www.nationwide.com/401KIncome](http://www.nationwide.com/401KIncome)

## **EXECUTIVE SPONSORS:**

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On Your Side®

May 3, 2010

Filed Electronically

CC:PA:LPD:PR (REG-148681-09)  
Room 5205  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, D. C. 20044

**Re: REG-148681-09**

Dear Internal Revenue Service:

On February 1, 2010, the U. S Department of Labor (Department) – Employee Benefits Security Administration (EBSA) and the Department of the Treasury (Treasury) released a Request for Information to obtain information from the public on the subject of lifetime income options in retirement plans, especially defined contribution plans. As a result of information received from this request, the Treasury may propose amendments to current Internal Revenue Code (Code) qualification provisions for defined contribution plans and the Department may propose changes to regulations promulgated pursuant to the Employee Retirement Income Security Act (ERISA) governing certain aspects of these plans. Nationwide Financial Services, Inc. (Nationwide) thanks the Treasury for providing the opportunity to comment on this important issue affecting participants in defined contribution plans, as well as plan sponsors and service providers to these plans.

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Sincerely,

A handwritten signature in cursive script, appearing to read "Anne L. Arvia".

Anne L. Arvia  
Senior Vice President  
Nationwide Financial – Retirement Plans